

Service Date: May 20, 1982

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of)	UTILITY DIVISION
La CASA GRANDE ESTATES WATER)	
COMPANY to Increase Water Rates and)	DOCKET NO. 81.10.105
Modify Certain Rules.)	
_____)	ORDER NO. 4898

APPEARANCES

FOR THE APPLICANT:

Robert Cummins, Attorney at Law, 1 Last Chance Gulch, Montana 59601

FOR THE INTERVENTORS:

James C. Paine, Montana Consumer Counsel, 34 West Sixth Helena, Montana 59620.

FOR THE COMMISSION:

Opal Winebrenner, Staff Attorney, 1227 11th Avenue, Helena, Montana 59620.

BEFORE:

CLYDE JARVIS, Commissioner & Hearing Examiner
JOHN B. DRISCOLL, Commissioner
HOWARD L. ELLIS, Commissioner
THOMAS J. SCHNEIDER, Commissioner

FINDINGS OF FACT

1. On October 26, 1981, La Casa Grande Estates Water Company (Applicant) filed an application with this Commission for authority to increase rates and charges and modify certain rules of operation for its consumers located in the La Casa Grande Estates Subdivision, East Helena, Montana.

2. On January 14, 1982 and February 16, 1982, pursuant to notices of public hearing, hearings were held in the Commission offices, 1227 11th Avenue, Helena, Montana and the East Helena Fire Hall. The purpose of the public hearings was to consider the merits of the Applicant's proposed water rate adjustments and rule modifications.

3. At the close of the hearing, the Commission requested the parties file proposed orders and briefs addressing the legal authority for the Applicant's proposed rule change to allow automatic property liens for delinquent water service accounts; both the Applicant and the Consumer Counsel made submissions.

4. At the public hearing Mr. Robert T. Cummins, as co-owner of the Company, testified for the Applicant in support of the application. Mr. Cummins testified relative to:
the need for a rate adjustment to cover annual operation and maintenance expenses, the estimated cost of proposed capital improvement program, the need for additional funds to permit the payment of past operation expenses, the financing mechanism to be utilized for the payment of capital improvements and past operation expenses and rate structure.

5. The Montana Consumer Counsel (MCC) at the public hearings presented the testimony of eight (8) public witnesses. The major concerns expressed by the public witnesses were: the magnitude of the proposed rate increase, the necessity of metering the system, the salaries paid to John Womack and Robert T. Cummins, co-owners of the utility as Project Manager and Business Manager, respectively, and the establishment of rates for multi-family, commercial and park consumers when no service is being rendered to these consumer classes.

6. The Applicant is a privately-owned public utility, but the Applicant has requested that this Commission authorize increased rates on a cost basis similar to the treatment afforded municipal utilities under this Commission's jurisdiction. The Applicant does not propose to establish a rate base or water plant evaluation.

Current stockholders acquired the stock of the corporation in December, 1980, for a consideration of \$10.00. Prior to that time, the developers of the subdivision "expensed" their investment in water utility assets. These expenses were incorporated or considered, at least to some degree, in the eventual purchase price paid to the developers by subdivision homeowners. The Commission is, therefore, unable to determine a rate base, nor does the record reveal monies, if any are present, that constitute consumer contributions in aid of construction.

It is the Commission's policy to evaluate the need for increased rates to private utilities, through analysis of rate base, operating revenues and expenses, capital structure and rate of return. This Commission's policy has developed over many years and embraces all privately-owned public utilities under its jurisdiction. The Commission cannot rationalize a deviation from this general ratemaking policy, for this particular privately-owned utility.

7. The Applicant has requested that the Commission approve funding for \$18,100 in proposed capital improvements (\$13,000 for meters, \$1,500 for storage tanks and \$3,600 for retooling and well cleaning) and \$6,900 in past due debts of the utility. In its application, the Applicant proposed borrowing \$26,000 from a local bank at 22 percent interest with a pay-back period of either 48 months or 36 months. The funds borrowed would be utilized to pay for the proposed capital improvements and the past due debts of the utility.

8. The Commission's ratemaking policy for privately-owned utilities and statutory guidelines relating to used and useful (See Section 69-3-109, MCA) will not permit the Commission to allow the Applicant to borrow funds for the proposed capital improvements and subsequently thereby require the consumers to pay off the loan through their water rates. As a privately-owned public utility, it is the responsibility of the utility to obtain funding either through equity investment or issuance of debt to fund capital improvements. After the capital expenditures have been made and are used and useful, the Commission will allow the utility depreciation expense and a return on the investment. The Commission finds that the Applicant's request for funding of the \$18,100 in capital improvements is inappropriate, and therefore denies the request. The Commission would recommend that the Applicant start establishing a rate base through the proposed capital improvements.

9. The Applicant's request for funding of capital improvements included \$3,600 for retooling and well cleaning. Examination of the Applicant's filing indicates that retooling and well cleaning will be a recurring expense item given the fact that this is the second time the Applicant has had to employ this procedure since acquiring the utility in December of 1980. The Commission finds it appropriate to allow \$1,200 as an annual allowance for the amortization of this as an expense item.

10. The Applicant's request for funding of \$6,900 in past due debts is denied. The Commission has held that past losses of a utility are not to be considered in the ratemaking

process. This position has been upheld by the Montana Supreme Court in Cities of Helena and Billings -vs- Public Service Commission, 38 St. Rptr. 1560 (1981).

11. There was considerable discussion on the record relative to Mr. Cummins and Mr. Womack receiving a monthly salary of \$400 each when they own the utility. Mr. Cummins testified that he estimated that he devoted approximately 30 hours per month in his capacity as business manager to the utility and that Mr. Womack devoted approximately 60 hours per month as project manager to the utility. There were no records produced substantiating Mr. Cummins' estimates of time devoted to utility operations by himself or Mr. Womack. Absent documentation of time devoted and considering the size of the utility and the cost concentration for administering utility operations, the Commission finds it reasonable to reduce the salary allowance of Mr. Cummins and Mr. Womack to a level of \$300 each per month.

12. On Schedule 2 of Exhibit No. 1 the Applicant provided a summary of the monthly operating expenses currently incurred by the utility. The total monthly operating expense, including Mr. Cummins' and Mr. Womack's salary at the level of \$400 per month, totaled \$2,370. This figure does not include any expense for maintenance and repair which the Applicant has requested be set at the level of \$200 per month. The Commission finds this \$200 per month level to be reasonable, based on its experience with privately-owned utilities of similar size.

13. Total monthly operating expenses of the utility are found to be \$2,470 based upon the Findings of Fact in this order. The Commission finds the annual operating expenses of the utility to be \$29,640 ($\$2,470 \times 12 = \$29,640$).

14. Schedule 3 of Exhibit No. 1 indicates that the annual operating revenues of the utility at current rates is \$14,688 ($153 \text{ subscribers} \times \$8 \text{ per month} \times 12 \text{ months} = \$14,688$).

15. Based on Findings of Fact Nos. 13 and 14, the Commission finds that the present rates are inadequate and that a revenue deficiency in the amount of \$14,950 exists.

16. The Commission finds that the Applicant should be authorized to assess a monthly flat rate to all residential consumers of \$16.15 per month ($\$29,640 \div 12 \div 153 = 16.15$).

17. Until such time as meters are installed by the utility, it will be necessary for the Applicant to continue the utilization of flat rates for the assessment of water charges. At the time meters are installed, the utility will have to file metered rates for Commission approval.

18. There was discussion on the record relative to the implementation of rates for multi-family, commercial and park consumers. The Commission finds that these rates should not be implemented until such service is actually rendered.

19. The Applicant has requested authorization to adopt a water service rule to allow the utility to assess a minimum \$25.00 charge for each combined instance of discontinuance and re-establishment of water service necessitated by the consumer's violation of service rules and nonpayment of service bill.

The Commission finds that the Applicant's request for a \$25.00 charge for discontinuance and re-establishment of water service to cover actual costs of providing the service to the consumers, and to deter consumers from violating water service rules or from failing to remain current on their water service bills, to be reasonable. However, the Commission finds that the proposed minimum charge of \$25.00 per combined instance shall be the maximum rather than minimum charge for the service, and that this charge shall also apply in instances where the consumer requests discontinuance and re-establishment of service.

20. The Applicant also requested the Commission to authorize a water service rule that would allow the Applicant to automatically place a property lien on the premises served when the consumer becomes delinquent for any sums due for water service. The proposed rule would grant the utility the option of enforcing the lien against the property owner regardless of whether the delinquent service bill was incurred by the property owner or a tenant.

The Applicant and the Montana Consumer Counsel submitted briefs on the legality of the proposed lien rule. The Applicant argued that it has a right to use the state's general lien statutes, and that it intended to enter into individual service contracts containing a lien provision with the property owners it serves. The Applicant also stated in its brief that it would put the lien provision in its service contracts regardless of whether the Commission approved the lien rule or not.

The Consumer Counsel focused on two major disincentives in allowing the creation of property liens through a service contract:

- a) There would be major enforcement problems caused by the fact that to have a valid lien there must be a valid indebtedness clue from the owner of the property to the claimant (here the Applicant). To make such a determination the

Commission would either, have to rely on the Applicant to determine whether the consumer

involved was actually the property owner or conduct its own investigation.

- b) Through the approval of the proposed rule, if the Applicant foreclosed on a lien, that foreclosure could be viewed as an act under color of state law, rather than a private act done by the utility. Foreclosure under color of state law would require the Commission provide due process protection for the affected consumer in the form of notice and hearing. The Consumer Counsel acknowledges that the U.S. Supreme Court has not dealt squarely with whether a privately-owned public utility acts under color of law, but feels Commission approval of the proposed rule would clearly invoke the color of state law.

The Commission's longstanding policy is that the consumer who actually receives the utility service is the consumer who is ultimately responsible for its payment. Therefore the Commission has not allowed any regulated public utility to create property liens as a means to collect delinquent debts for utility service. The Commission has recently adopted new water rules for privately-owned utilities and again reiterated that the use of property liens would not be allowed.

By the Applicant's own testimony in this proceeding, the Applicant has allowed accounts to become delinquent for a period of three months or more, and has never discontinued service to such delinquent consumers. The Commission recognizes that delinquent accounts are, to some extent, a problem for nearly every public utility. The Commission's rules allow a utility to require a deposit from the consumer for utility service, and the Commission's general water rules have always allowed a utility to discontinue service for nonpayment of bills.

It is most difficult to perceive why the Applicant is requesting the Commission to authorize a rule to allow the creation of property liens, when the Applicant has failed to use any of the existing lawful means to encourage consumers to remain current on their service accounts.

21. The Commission denies the Applicant's proposed property lien rule, and strongly encourages the Applicant to utilize the options available to it under the existing rules of the Commission. Although the Applicant has indicated in its brief that upon denial of this rule request it intends to create property liens through contracts with its consumers, the Commission

reminds the Applicant that it is a regulated public utility, and that such action shall be considered a violation of this Order.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and subject matter in this proceeding pursuant to Title 69, Chapter 3, MCA.
2. The Commission afforded all interested parties notice of and an opportunity to participate in this proceeding pursuant to Title 2, Chapter 4, MCA.
3. The rates approved herein are just and reasonable.

ORDER

NOW THEREFORE, at a session of the Montana Public Service Commission, Department of Public Service Regulation, held in its offices at 1227 11th Avenue, Helena, Montana on this 17th day of May, 1982, there being present a quorum of Commissioners, there came regularly before the Commission for final action the matters and things in Docket No. 81.10.105, and the Commission being fully advised in the premises;

IT IS ORDERED by the Commission that La Casa Grande Estates Water Company shall file rate schedules reflecting a monthly flat rate for residential consumers of \$16.15 per month which produces annual revenues of \$29,640.

IT IS FURTHER ORDERED that the utility is authorized to levy a disconnection and re-establishment charge of \$25.00 for each combined instance necessitated by the consumer's violation of rules of operation, for nonpayment of water service, or when requested by the consumer.

IT IS FURTHER ORDERED that the utility is not authorized to initiate a rule imposing a lien on property for unpaid water service.

IT IS FURTHER ORDERED that a full, true and correct copy of this order be sent forthwith by first class United States mail to the Applicant and to all other appearances herein.

IT IS FURTHER ORDERED that the rates will be effective for water service rendered on and after May 17th, 1982.

THE FOREGOING ORDER was adopted by the Department of Public Service Regulation of the State of Montana, Public Service Commission IN OPEN SESSION at Helena, Montana this 17th day of May, 1982 by a vote 4 – 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

CLYDE JARVIS, Commissioner, Presiding

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Madeline L. Cottrill
Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review of the final decision in this matter. If no Motion for Reconsideration is filed, judicial review may be obtained by filing a petition for review within thirty (30) days from the service of this order. If a Motion for Reconsideration is filed, a Commission order is final for purpose of appeal upon the entry of a ruling on that motion, or upon the passage of ten (10) days following the filing of that motion. cf. the Montana Administrative Procedure Act, esp. Sec. 2-4-702, MCA; and Commission Rules of Practice and Procedure, esp. 38.2.4806 ARM.